

Conditional Use Permit Staff Report for Planning Commission Public Hearing on May 3, 2022 Case File CUP 2022-01 Resnikoff

Date: April 20, 2022

Case File: CUP 2022-01 Resnikoff dock

Property Owner: Nancy Hatley and Phil Resnikoff
496 S Schooner Creek Rd
Lincoln, City, OR 97367

Situs Address: 496 S Schooner Creek Rd

Location: Southeast corner of S Schooner Creek Rd/SE 51st St intersection

Tax Map and Lot: 07-11-27-DA-00101-00

**Comprehensive
Plan Designation:** Commercial General District

Zoning District: General Commercial (GC) Zone

Site Size: 0.8 acre

Proposal: Request for a conditional use permit for a dock

**Surrounding
Land Uses
and Zones:** North: S Schooner Creek Rd, undeveloped; R-1-5
South: Houses; GC
East: Houses; County zoning
West: SE 51st St, houses; R-1-7.5

Authority: Section 17.76.160 of the Lincoln City Municipal Code (LCMC) gives the Planning Commission the authority to approve, approve with conditions, disapprove, or revoke conditional use permits subject to the provisions of LCMC Chapter 17.77.

Procedure: The Planning and Community Development Department mailed notice to the owners of all properties within 250 feet of the site on April 1, 2022. The *News Guard* published the public hearing notice on April 19, 2022.



Applicable	LCMC Chapter 17.32 General Commercial (GC) Zone
Substantive	LCMC Chapter 17.44 Marine Waterway (M-W) Zone
Criteria:	LCMC Section 17.77.060 Conditional Uses

BACKGROUND

The subject property (site) is addressed as 496 S Schooner Creek Rd and contains a detached dwelling and accessory structures. The site is bordered by S Schooner Creek Rd to the north and SE 51st St to the west. Properties to the east of the site are not in city limits. Along the site's south boundary there is a small "finger" of water from the adjacent Schooner Creek.

Almost the entire site is in the AE flood hazard zone. The southeast portion of the site is in the floodway. The site is not contain any aesthetic resource or bluff erosion hazards. Portions of the site along the south boundary contain significant wetlands.

COMMENTS

Comments were received from Oregon Department of State Lands (DSL) noting that Schooner Creek is designated essential salmonid habitat (so the dock may need a permit from DSL) and is a tidal water, therefore, under DSL ownership. DSL was under the impression that the dock had been placed by a previous owner, which is not the case. The full email is included as part of this staff report.

Comments were received from Oregon Department of Fish and Wildlife (ODFW). ODFW provided their Residential Dock Guidelines to serve as their comments on the dock, stating that they use the guidelines on all residential over water structures that require some type of permit from a local, state, or federal agency. The full email and the guidelines are included as part of this staff report.

Comments were received from Adam Springer, attorney at law, on behalf of Mr. Cassel stating the following:

"Thanks for speaking with me today. Attached are the photos I was provided by Mr. Cassel showing how much of the waterway is blocked by the dock when the water is low."

"Attached are two more photos, both taken recently and taken at the same time. One shows my client's access to the water, and then the second shows Resnikoff's dock at that same tide."

The emails and photos are included as part of this staff report.

ANALYSIS

Chapter 17.32

17.32.040, Conditional uses permitted

T. Docks, subject to the provisions of LCMC 17.44.040

Finding: LCMC 17.32.040.T allows docks in the GC zone, subject to an approved conditional use permit application and compliance with the provisions of LCMC 17.44.040. This application is the official request for approval of the dock conditional use. Compliance with LCMC 17.44.040 is addressed in this report.

Chapter 17.44 Marine Waterway (M-W) Zone

17.44.040 Standards for conditional uses

In the M-W zone, the applicable provisions of this section shall apply. The standards for conditional uses shall be as follows:

A. Standards for Uses Involving Filling, Dredging, Drainage, Disposal of Dredging Spoils, and Similar Activities or Construction of Wharfs, Bulkheads or Similar Devices.

Finding: This application and request does not include filling, dredging, drainage, or disposal of dredging spoils; therefore, these standards are not applicable.

B. Standards for Uses Involving Construction, Addition or Reconstruction of a Pier, Dock, Boat House or Similar Facility.

Finding: The property owners would like to obtain conditional use permit approval for a dock on the site that was constructed prior to obtaining conditional use permit approval. The site does not contain any existing piers, docks, boat houses, or similar facilities, and these facilities are not proposed.

- 1. Evidence shall be provided that the applicant has complied with, or fully intends to comply with, all standards of the Department of Environmental Quality, the Division of State Lands, and all other agencies having interests or ordinances applicable to the property in question.*

Finding: DSL provided comments on April 19, 2022, indicating that the property owners need to contact both Carrie Landrum and Jennifer Miller at DSL for requirements and/or permits. DSL also noted that Schooner Creek is designated essential salmonid habitat and is a tidal water; therefore, it is under DSL ownership.

ODFW provided comments on March 30, 2022, with their residential dock guidelines. They use these guidelines to comment on all residential over water structures that require some type of permit from a local, state, or federal agency. At a minimum, the dock requires a conditional use permit from the city. It's possible that DSL will require permits as well.

The property owners provided no evidence in the submitted materials that they have contacted any agency for requirements. Accordingly, this requirement is not met.

The facility or any use related to it shall not allow any water pollution to occur to any nearby tidelands, marshlands, rivers, streams or other waterways used for the raising, production or preservation of marine life or other natural resources.

Finding: According to the property owners, no activities are proposed that will involve any water pollution to occur. Dock construction and materials will adhere to all requirements to avoid water pollution. The property owners will use the dock to place kayaks in the water. These activities do not create any water pollution. This requirement is met.

- 3. The facility shall not substantially alter the course of any channel or the natural movement of any waters or result in increased flood hazards, or the formation of appreciable bottom or sludge deposits deleterious to marine life, and shall meet all of the following requirements:*

- a. No dock, pier or similar facility shall extend into any watercourse more than 25 feet from ordinary low water line nor 50 feet from ordinary high water line, unless it can be shown that*

such extension is necessary and will not increase flood hazards or create other problems such as the deterioration or destruction of marine life or wildlife habitat as a result of the extension.

Finding: The submitted site plan does not identify the ordinary low water line or the ordinary high water line. The submitted site plan also does not show the length of the dock or its placement in relation to either the ordinary low or ordinary high water line. Staff is unable to determine if this requirement is met from the submitted materials.

b. No dock, pier or similar facility shall extend into the navigable channel any distance greater than required for safe moorage and shall be designed so as to minimize potential flood hazard and loss of navigable waterway area.

Finding: The submitted site plan does not provide enough details for staff to ascertain if the dock's location presents a loss of navigable waterway area. Staff is, therefore, unable to determine if this requirement is met from what has been submitted.

c. No dock, pier or similar facility shall extend into any watercourse more than five percent of the width thereof as measured perpendicular from the mean low water line on one side of the watercourse to the mean low water line on the opposite side.

Finding: The submitted site plan does not show the dimensions of the dock, the mean low water line, or the dimensions of the site. Staff is, therefore, unable to determine if this requirement is met from what has been submitted.

2. *No plumbing facilities for the handling of domestic or industrial waste shall be part of the facility unless approved by the city manager or design.*

Finding: The submitted materials don't show any plumbing facilities on the existing dock. This requirement is met.

5. *Application for a permit for a pier, dock, bulkhead, boat house, or similar facility shall include:*

a. The source of the applicant's right to construct the facility;

Finding: The submitted narrative states: "The dock is on our property."

b. The purpose of the facility;

Finding: The submitted narrative states: "The purpose of the dock is to get into and out of kayaks and canoes."

c. The legal description of the area where the facility will be located;

Finding: The site is identified as 07-11-27-DA-00101-00.

d. A map and drawings, showing the plan for construction of the facility. Such plan shall include a vicinity map drawn to scale showing location and design of similar facilities and other development within 250 feet of the parcel upon which the improvement is proposed;

Finding: The submitted materials include a site plan, but it is not drawn to scale, nor does it appear to show other development within 250 feet of the site. The submitted narrative states that “there are no other similar facilities within 250 feet of this dock and a drawing of the dock and its location are attached below.”

e. The time when the project is scheduled to begin and to be completed.

Finding: According to the submitted narrative, the project was completed on April 4, 2017.

6. Plans for a pier, dock, boat house, or similar facility shall meet the following requirements:

a. In new subdivisions considered by the planning commission following the adoption of the ordinance codified in this title, docks having less than 10 moorage spaces will be approved only in the instance that no other public or private means of launching or moorage is available or can be developed within 1,000 feet of the site in question.

Finding: The site is not a new subdivision, so this requirement is not applicable.

b. Facilities being proposed in areas where it is likely that additional similar structures will be desired shall be designed to be combined into joint facilities whenever possible.

Finding: To the south of the site is an existing house that is adjacent to the same body of water to which the site is adjacent. It is likely that a similar structure will be desired by the owners of the adjacent south house. The submitted narrative gives no indication that coordination has taken place with the adjacent property owner on designing a combined joint facility. This requirement has not been met.

c. The design of moorages must provide sheer logs or similar devices for fending debris. Such improvements need not be maintained during periods where there is no danger of flood water.

Finding: This is not applicable to the existing dock. No moorages are proposed as part of this application.

d. Docks shall have the long dimension running parallel to the channel unless future development will result in pier construction or moorages being connected, necessitating facility design perpendicular to the channel. The width of those portions of such facilities shall be the minimum dimension required to provide safe access and moorage.

Finding: The submitted site plan shows that the long dimension of the dock is parallel to the body of water in which it sits. This requirement is met.

e. One dock shall not be closer to another dock than the length of the shorter structure or 25 feet, whichever distance is greater.

Finding: The submitted site plan shows no other docks within the vicinity. The GIS map also shows no other docks within the vicinity. This requirement is met.

f. Additionally, docks allowed with conditional use approval in the GC, TVC, OS, P, RM, RC, and R1 zoning districts, must meet the following requirements and standards:

i. Total area of dock on water must not exceed 144 square feet with a width not exceeding six feet and a length not exceed 24 feet.

Finding: The submitted site plan is not to scale and it does not provide any dimensions. However, the submitted narrative states that the dock is 6 feet wide by 11 ½ feet long, with a total area of 69 square feet. This requirement is met.

ii. No part of the dock can be covered or enclosed, such as but not limited to boat houses, sheds, fish cleaning stations, kayaks, canoes, hot tubs, and/or benches.

Finding: The existing dock is not covered or enclosed, and no covers or enclosures are proposed. This requirement is met.

iii. Docks must have at least 50 percent of the float surface composed of grating containing at least 60 percent open space surface.

Finding: The submitted narratives states that the dock complies with this requirement. Other than that statement, the submitted materials do not provide enough information to determine the composition of the float surface; accordingly, staff cannot conclusively determine if this requirement is met.

iv. The ramp/gangway of the dock must be 100 percent grated to allow light to pass through. Ramp width must not exceed five feet. The ramp square footage is not included in the total dock area square footage.

Finding: The submitted materials do not provide enough information to determine if the ramp/gangway of the dock is 100% grated; accordingly, staff cannot conclusively determine if this requirement is met.

v. Grated surfaces on the docks must not be used for storage (e.g., boats, benches, kayaks, fish cleaning stations, etc.) or other purposes that will reduce natural light penetration through the dock.

Finding: The photos submitted with the application, as well as the GIS map, show that the dock is being used to store a kayak. As a condition of approval, no storage of boats, benches, kayaks, fish cleaning stations, etc. shall be allowed on the dock and all such existing items shall immediately be removed.

vi. Treated wood is not allowed as a construction material for docks or ramps. Treated wood is lumber, pilings, and other wood products preserved with alkaline copper quaternary (ACQ), ammoniacal copper arsenate (ACA), ammoniacal copper zinc arsenate (ACZA), copper naphthenate, chromated copper arsenate (CCA), pentachlorophenol, or creosote.

Finding: The submitted materials include a letter from the wood manufacturer in which it is stated that the dock is made with copper azole (CA) and that the U.S. EPA has approved CA for freshwater piling as well as freshwater and saltwater splash (marine) decking applications. The code does not preclude wood treated with CA. This requirement is met.

vii. Oregon law requires encapsulation of expanded polystyrene foam flotation used in state waters. Encapsulation methods and materials must be approved by the Oregon State Marine Board prior to installation of foam flotation.

Finding: The submitted package includes information about the floats used for the dock. The information lists that the floats have a “rugged, seamless, rotationally-molded polyethylene outer shell” and a “solid expanded polystyrene foam core.” These features show that the polystyrene foam flotation device is encapsulated. The narrative does not provide any information regarding approval from the Oregon State Marine Board prior to the April 2017 installation. As a condition of approval, the property owners shall obtain approval from the Oregon State Marine Board for the continued use of the installed floats and provide an emailed copy of that approval to Lincoln City Planning and Community Development. If the Oregon State Marine Board does not approve the existing floats, then the floats shall be removed and replaced with floats approved by the Oregon State Marine Board.

viii. All pilings must be fitted with devices to prevent perching by piscivorous birds.

Finding: The dock is free floating and does not contain pilings. This requirement is not applicable.

ix. All work must be completed in accordance with the Oregon Department of Fish and Wildlife Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources.

Finding: No work is proposed. The dock is an existing dock. This requirement is not applicable to the current application.

x. There must be minimal disturbance to any buried, submerged, or floating woody debris removal during construction.

Finding: The submitted narrative did not provide any information regarding disturbances during construction in 2017. No new construction is proposed. This requirement is not applicable to the current application.

xi. For piling removal, dislodge the piling with a vibratory hammer, when possible, to avoid a pile break by twisting or bending. A floating surface boom may be necessary to capture floating surface debris.

Finding: No piling removal is proposed as part of this request. This requirement is not applicable to the current application.

17.77.060 Conditional Uses

In order to grant any conditional use, the planning commission must find, based upon evidence, both factual and supportive, provided by the applicant, that:

1. The proposal is in compliance with the comprehensive plan;

Finding: The property owners request conditional use permit approval for a dock. As detailed earlier in this report, the submitted materials do not conclusively show compliance with LCMC Chapter 17.44. The zoning code enacts the comprehensive plan, so without compliance with LCMC Chapter 17.44 there is not compliance with the comprehensive plan. Conditions of approval can be applied to make the project comply with LCMC Chapter 17.44, though, which would then make the proposal in compliance with the comprehensive plan.

2. The site for the proposed use is adequate in size and shape to accommodate the use and all yards, spaces, wall and fences, parking, loading, landscaping and other features required by this title;

Finding: The property owners request conditional use permit approval for a dock. It is unclear if all the requirements of LCMC Chapter 17.44, as detailed earlier in this report, are met. No setbacks, common spaces, retaining walls, parking and loading areas, or landscaping are required for a dock. Staff concludes that this criterion is not satisfied, but it can be with conditions of approval.

- 3. *The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;***

Finding: The project proposes installation of a private dock at a private residence. The project will not generate any traffic over and above the traffic from the existing detached dwelling. This criterion is satisfied.

- 4. *The proposed use will have minimal adverse impact upon adjoining properties and the improvements thereon. In making this determination, the commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing;***

Finding: The placement of the dock on the site may or may not meet all the dock siting requirements of LCMC Chapter 17.44 as detailed earlier in this report. No buildings, retaining walls, fences, landscaping, screening, exterior lighting, or signage are proposed or required for the dock. No pedestrian access is required to the private dock on a private residence site. Vehicular egress/ingress and internal circulation is not needed for a private dock on a private residence site. The site itself is already existing and improved with a driveway and detached dwelling with associated required residential landscaping. Staff concludes that this criterion may or may not be satisfied, but it can be with the conditions of approval.

- 5. *In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complementary to the surrounding area.***

Finding: The site does not have any historic, scenic, or cultural attributes, so this requirement is not applicable.

RECOMMENDATION

Staff recommends that the Planning Commission hold a public hearing on the proposed conditional use request, take public testimony, close the public hearing, deliberate, and determine whether the request complies with the criteria for granting approval of the request, complies with the criteria with conditions, or doesn't comply with the criteria.

Should the Planning Commission determine that the request complies with the criteria with conditions, staff suggests the following conditions of approval:

1. The property owners shall email Oregon Department of State Lands (DSL), Oregon Department of Fish and Wildlife, and Oregon State Marine Board within 14 business days of the signing of the final order approving the conditional use to determine what requirements, if any, need to be met. Lincoln City Planning and Community Development shall be copied on all emailed communications, and copies of written approvals, reviews, and/or permits shall be submitted to Lincoln City Planning and Community Development within 7 business days of receipt.
2. The property owners shall provide written evidence to the Lincoln City Planning and Community Development Department from both Carrie Landrum and Jennifer Miller at DSL that the project has

been reviewed and approved by each of them or written evidence that such review and approval is not necessary.

3. All required permits shall be obtained within one year of the conditional use permit approval and an electronic copy of each shall be emailed to Lincoln City Planning and Community Development for inclusion in the project folder.
4. A revised site plan that is drawn to scale shall be submitted to Lincoln City Planning and Community Development that shows the ordinary low and ordinary high water lines, along with the dock and the dock's dimensions clearly labeled, and the location of the dock such that it does not extend into any watercourse more than 25 feet from ordinary low water line nor 50 feet from ordinary high water line.
5. A revised site plan that is drawn to scale shall be submitted showing the navigable waterway area along with both the ordinary low and ordinary high water lines, and the navigable route in times of low water for the adjacent neighbor such that the dock's location is not precluding use of the watercourse during times of low water.
6. A revised site plan that is drawn to scale shall be submitted that shows the mean low water line on both sides of the watercourse, and the dimensions and location of the dock such that the dock does not extend into any watercourse more than 5% of the width thereof as measured perpendicular from the mean low water line on one side of the watercourse to the mean low water line on the opposite side.
7. The property owners shall provide sufficient evidence to Lincoln City Planning and Community Development to show that the ramp/gangway to the dock is 100% grated.
8. The property owners shall cease to use the dock for storage of boats, benches, kayaks, fish cleaning stations, etc. and anything else. The dock shall remain free of storage of any item at all times.
9. The property owners shall provide sufficient evidence to Lincoln City Planning and Community Development to show that at least 50 percent of the float surface is composed of grating containing at least 60 percent open space surface.
10. The property owners shall obtain approval from the Oregon State Marine Board for the continued use of the installed floats and provide an emailed copy of that approval to Lincoln City Planning and Community Development. If the Oregon State Marine Board does not approve the existing floats, then the floats shall be removed and replaced with floats approved by the Oregon State Marine Board.